IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.39321 of 2024
and
W.M.P.Nos.42578 and 42580 of 2024

IBC Limited,
Represented by its Director, Mr.Rajamohan Reddy Kandula
148, Vanguard House,
Second line beach, Chennai,
Tamilnadu 600 001. ... Petitioner

Vs.

1.The Assistant Commissioner (ST),
Harbour Assessment Circle,
Chennai North, Zone -I
No.32, Integrated Commercial Taxes Building,
Elephant Gate Bridge Road,
Vepery, Chennai 600 003.

2.Deputy Commissioner (ST),
GST Appeal Chennai -I, Greams Road,
Chennai 600 006. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records in the file of the respondents and quash the impugned order under Section 74 of the Tamil Nadu Goods and Service Tax, 2017/ Central Goods and Service Tax Act, 2017 including the summary of the order in Form GST DRC-07 both dated 19.07.2023 and having Reference Number ZD330723080501O and its annexure dated 19.07.2023 in GSTIN:33AAACI7891J1Z9/2022-23 passed by the first respondent for FY 2022-23 along with the acknowledgment in Form GST APL-02 dated 18.10.2024 issued by the second respondent under Rule 108 of Central Goods and Services Tax Rules, 2017 / Tamil Nadu Goods and Services Tax Rules, 2017 for the FY 2022-23.

For Petitioner : M/s.N.V.Lakshmi

For Respondents : Mr.V.Prashanth Kiran,
Government Advocate for R1, R2.

ORDER

The present writ petition is filed challenging the impugned order passed by the first respondent dated 19.07.2023 relating to the assessment year 2022-2023.

2. The petitioner is engaged in the business of oil well drilling and is registered under the Goods and Services Tax Act, 2017. During the relevant period of 2022-23, the petitioner filed its returns and paid the appropriate taxes. However, during the scrutiny of the petitioner's monthly return, it was *inter alia* noticed that there was an alleged mismatch between GSTR-1 and GSTR-3B.

2.1. Pursuant thereto, a notice in Form GST ASMT-10 was issued on 24.08.2022, followed by notices Form GST DRC-01A on 31.01.2023 and Form GST DRC-01 on 13.02.2023. In response, the petitioner had filed its reply on 30.05.2023. However, without considering the reply filed by the petitioner, the impugned order came to be passed, confirming the proposal.

3. The impugned order is challenged on the premise that neither the show cause notices nor the impugned order of assessment has been served on the petitioner by tender or sending it by RPAD, instead it had been uploaded in the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and was thus unable to participate in the adjudication proceedings.

4. It is submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, they would be able to explain the alleged discrepancies.. The learned counsel for the petitioner would then place reliance upon the recent judgment of this Court in the case of ***M/s.K.Balakrishnan, Balu Cables vs. O/o. the Assistant Commissioner of GST & Central Excise in W.P.(MD)No.11924 of 2024 dated 10.06.2024,*** to submit that this court has remanded the matter back in similar circumstances subject to payment of 25% of the disputed taxes. It was further submitted that subsequent to the passing of the impugned order, the petitioner had remitted entire disputed tax and that they may be granted one final opportunity before the adjudicating authority to put forth their objections to the proposal, to

which, the learned Government Advocate appearing for the respondents does not have any serious objection.

5. By consent of both parties, the writ petition stands disposed of on the following terms:

a) The impugned order dated 19.07.2023 is set aside.

b) The petitioner shall deposit 25% of the disputed taxes as admitted by the learned counsel for the petitioner and the respondents, within a period of four weeks from the date of receipt of a copy of this order.

c) If any amount has been recovered or paid out of the disputed taxes, including by way of pre-deposit in appeal, the same would be reduced/adjusted, from/towards the 25% of disputed taxes directed to be paid. The assessing authority shall then intimate the balance amount out of 25 % of disputed taxes to be paid, if any, within a period of one week from the date of receipt of a copy of this order. The petitioner shall deposit such remaining sum within a period of three weeks from such intimation.

d) The entire exercise of verification of payment, if any, intimation of the balance sums, if any, to be paid for compliance with the direction of payment of 25% of the disputed taxes, after deducting the sums already paid and payment by the petitioner of the balance amount, if any, on intimation in compliance with the above direction shall be completed within a period of four weeks from the date of receipt of copy of this order.

e) Failure to comply with the above condition viz., payment of 25% of disputed taxes within the stipulated period i.e., four weeks from the date of receipt of a copy of this order shall result in restoration of the impugned order.

f) If there is any recovery by way of attachment of Bank account or garnishee proceedings, the same shall be lifted /withdrawn on complying with the above condition viz., payment of 25 % of the disputed taxes.

g) On complying with the above condition, the impugned order of assessment shall be treated as show cause notice and the petitioner shall submit its objections within a period of four (4) weeks from the date of receipt of a copy of this order along with supporting documents/material. If any such objections are filed, the same shall be considered by the respondents and orders shall be passed in accordance with law after affording a reasonable opportunity of hearing to the petitioner. It is made clear that if the above conditions viz., 25% of disputed taxes is not complied or objections are not filed within the stipulated period, four weeks respectively from the date of receipt of a copy of this order, the impugned order of assessment shall stand restored.

6. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

21.12.2024

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation: Yes/No
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MOHAMMED SHAFFIQ, J.

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